



House of Representatives

File No. 780

General Assembly

January Session, 2001

(Reprint of File No. 435)

Substitute House Bill No. 6914
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 18, 2001

**AN ACT CONCERNING THIRD PARTY LIABILITY, REVISIONS TO THE
TRANSFER ACT, AND MINOR REVISIONS TO CERTAIN
ENVIRONMENTAL PROTECTION STATUTES.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (a) No owner of real property shall be liable for
2 any costs or damages pursuant to any provision of the general statutes
3 or common law to any person other than this state, any other state or
4 the federal government, with respect to any pollution or source of
5 pollution on or emanating from such owner's real property that
6 occurred or existed prior to such owner taking title to such property,
7 provided:

8 (1) The owner did not establish or create a condition or facility at or
9 on such property that reasonably can be expected to create a source of
10 pollution to the waters of the state for purposes of section 22a-432 of
11 the general statutes and such owner is not responsible pursuant to any
12 other provision of the general statutes for creating any pollution or
13 source of pollution on such property;

14 (2) The owner is not affiliated with any person responsible for such
15 pollution or source of pollution through any direct or indirect familial
16 relationship, or any contractual, corporate or financial relationship
17 other than that by which such owner's interest in the property was
18 conveyed or financed; and

19 (3) The Commissioner of Environmental Protection has approved in
20 writing: (A) An investigation of the pollution and sources of pollution
21 on or emanating from the real property which pollution or sources of
22 pollution occurred prior to such owner's taking title to such property,
23 conducted in accordance with the prevailing standards and guidelines
24 which investigation was conducted by an environmental professional
25 licensed in accordance with section 22a-133v of the general statutes,
26 and (B) a final remedial action report prepared by a licensed
27 environmental professional that demonstrates that remediation of such
28 pollution and sources of pollution was completed in accordance with
29 the remediation standards in regulations adopted pursuant to section
30 22a-133k of the general statutes.

31 (b) The provisions of this section do not relieve a real property
32 owner of (1) any liability for damages to person or property as a result
33 of any pollution or pollution condition caused by such owner on or
34 emanating from the subject real property, or (2) any liability if such
35 owner fails to comply with the provisions of an environmental land
36 use restriction created pursuant to section 22a-133o of the general
37 statutes for such real property or with the conditions of a variance for
38 the real property that was approved by the commissioner in
39 accordance with regulations adopted pursuant to section 22a-133k of
40 the general statutes.

41 Sec. 2. Section 22a-134 of the general statutes is repealed and the
42 following is substituted in lieu thereof:

43 For the purposes of this section and sections 22a-134a to 22a-134d,
44 inclusive, as amended by this act:

45 (1) "Transfer of establishment" means any transaction or proceeding

46 through which an establishment undergoes a change in ownership, but
47 does not mean (A) conveyance or extinguishment of an easement, (B)
48 conveyance of [property] an establishment through a [judicial]
49 foreclosure, as defined in subsection (b) of section 22a-452f, (C)
50 conveyance of a deed in lieu of foreclosure to [an institutional] a
51 lender, [including, but not limited to, a banking institution] as defined
52 in and that qualifies for the secured lender exemption pursuant to
53 subsection (b) of section 22a-452f, (D) conveyance of a security interest,
54 [including, without limitation, a mortgage] as defined in subdivision
55 (7) of subsection (b) of section 22a-452f, (E) [renewal of a lease, (F)
56 conveyance, assignment or termination] execution of a lease for a
57 period less than [twenty-five years from the date of such conveyance,
58 assignment or termination] ninety-nine years, including options or
59 extensions of such period, [(G)] (F) any change in ownership approved
60 by the Probate Court, [(H) conveyance] (G) devolution of title to a
61 surviving joint tenant, or to a trustee, executor, or administrator under
62 the terms of a testamentary trust or will, or by intestate succession, [(I)]
63 (H) corporate reorganization not substantially affecting the ownership
64 of the establishment, [including, but not limited to, stock dividend
65 distributions or stock distributions in connection with a merger, (J) the
66 original] (I) the issuance of stock or other securities of an entity which
67 owns or operates an establishment, [(K)] (J) the transfer of stock,
68 securities or other ownership interests representing less than [a
69 majority of the voting power] forty per cent of the ownership of the
70 entity that owns or operates the establishment, [(L)] (K) any
71 conveyance of an interest in an establishment where the transferor is
72 the sibling, spouse, child, parent, grandparent, child of a sibling or
73 sibling of a parent of the transferee, (L) conveyance of an interest in an
74 establishment to a trustee of an inter vivos trust created by the
75 transferor solely for the benefit of one or more of the sibling, spouse,
76 child, parent, grandchild, child of a sibling or sibling of a parent of the
77 transferor, (M) any conveyance of a portion of a parcel upon which
78 portion no establishment is or has been located and upon which there
79 has not occurred a discharge, spillage, uncontrolled loss, seepage or
80 filtration of hazardous waste or hazardous substance, provided either

81 the area of such portion is not greater than fifty per cent of the area of
82 such parcel or written notice of such proposed conveyance and an
83 environmental condition assessment form for such parcel is provided
84 to the commissioner sixty days prior to such conveyance, (N)
85 conveyance of a service station, as defined in subdivision (5) of this
86 section, (O) any conveyance of [a parcel] an establishment which, prior
87 to July 1, 1997, had been developed solely for residential use and such
88 use has not changed, (P) any conveyance of [a parcel] an establishment
89 to any entity created or operating under chapter 130 or 132, or to an
90 urban rehabilitation agency, as defined in section 8-292, or to a
91 municipality under section 32-224, or to the Connecticut Development
92 Authority or any subsidiary of the authority, (Q) any conveyance of a
93 parcel in connection with the acquisition of properties to effectuate the
94 development of the overall project, as defined in section 32-651, (R) the
95 conversion of a general or limited partnership to a limited liability
96 company under section 34-199, (S) the transfer of general partnership
97 property held in the names of all of its general partners to a general
98 partnership which includes as general partners immediately after the
99 transfer all of the same persons as were general partners immediately
100 prior to the transfer, [and] (T) the transfer of general partnership
101 property held in the names of all of its general partners to a limited
102 liability company which includes as members immediately after the
103 transfer all of the same persons as were general partners immediately
104 prior to the transfer, or (U) acquisition of an establishment by any
105 governmental or quasi-governmental condemning authority;

106 (2) "Commissioner" means the Commissioner of Environmental
107 Protection or [his] the designated agent of the commissioner;

108 (3) "Establishment" means any real property at which or any
109 business operation from which (A) on or after November 19, 1980,
110 there was generated, except as the result of remediation of polluted
111 soil, groundwater or sediment, more than one hundred kilograms of
112 hazardous waste in any one month, (B) hazardous waste generated at a
113 different location [by another person or municipality] was recycled,
114 reclaimed, reused, stored, handled, treated, transported or disposed of,

115 (C) the process of dry cleaning was conducted on or after May 1, 1967,
116 (D) furniture stripping was conducted on or after May 1, 1967, or (E) a
117 vehicle body repair [shop or vehicle painting shop is or] facility was
118 located on or after May 1, 1967;

119 (4) "Hazardous waste" means any waste which is (A) hazardous
120 waste identified in accordance with Section 3001 of the federal
121 Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq.,
122 (B) hazardous waste identified by regulations adopted by the
123 Commissioner of Environmental Protection, or (C) polychlorinated
124 biphenyls in concentrations greater than fifty parts per million except
125 that sewage, sewage sludge and lead paint abatement wastes shall not
126 be considered to be hazardous waste for the purposes of this section
127 and sections 22a-134a to 22a-134d, inclusive, as amended by this act;

128 (5) "Service station" means a retail operation involving the resale of
129 motor vehicle fuel including, but not limited to, gasoline, diesel fuel
130 and kerosene and which operation does not otherwise meet the
131 definition of an establishment;

132 (6) "Certifying party" means, in the case of a Form III or Form IV, a
133 person associated with the transfer of an establishment who signs a
134 Form III or Form IV and who agrees to investigate the parcel in
135 accordance with [the standards adopted by the commissioner in
136 regulations adopted in accordance with the provisions of chapter 54 or,
137 until January 1, 2002, or the adoption of such regulations, whichever is
138 sooner, in accordance with] prevailing standards and guidelines and to
139 remediate pollution caused by any release at the [parcel] establishment
140 in accordance with the remediation standards and, in the case of a
141 Form I or Form II, a transferor of an establishment who signs the
142 certification on a Form I or II;

143 (7) "Party associated with the transfer of an establishment" means
144 (A) the present or past owner or operator of the establishment, (B) the
145 owner of the real property on which the establishment is located, (C)
146 the transferor, transferee, lender, guarantor or indemnitor, [(C)] (D) the

147 business entity which operates or operated the establishment, or [(D)]
148 (E) the state;

149 (8) "Remediation standards" means regulations adopted by the
150 commissioner pursuant to section 22a-133k;

151 (9) "Parcel" means piece, parcel or tract of land which constitutes an
152 establishment, as defined in subdivision (3) of this section, or on which
153 is or was located any business operation which constitutes an
154 establishment;

155 (10) "Form I" means a written [declaration] certification by the
156 transferor of an establishment on a form prescribed and provided by
157 the commissioner that no discharge, spillage, uncontrolled loss,
158 seepage or filtration of hazardous waste or a hazardous substance has
159 occurred at the [parcel] establishment which [declaration] certification
160 is based on an investigation of the parcel in accordance with [the
161 standards adopted by the commissioner in regulations adopted in
162 accordance with the provisions of chapter 54 or, until January 1, 2002,
163 or the adoption of such regulations, whichever is sooner, in accordance
164 with] prevailing standards and guidelines;

165 (11) "Form II" means a written [declaration] certification by the
166 transferor of an establishment on a form prescribed and provided by
167 the commissioner that the parcel has been investigated in accordance
168 with [the standards adopted by the commissioner in regulations
169 adopted in accordance with the provisions of chapter 54 or, until
170 January 1, 2002, or the adoption of such regulations, whichever is
171 sooner, in accordance with] prevailing standards and guidelines and
172 that (A) any discharge, spillage, uncontrolled loss, seepage or filtration
173 of hazardous waste or a hazardous substance which has occurred at
174 the [parcel] establishment has been remediated in accordance with the
175 remediation standards and that the remediation has been approved in
176 writing by the commissioner or has been verified pursuant to section
177 22a-133x or section 22a-134a in a writing attached to such form by a
178 licensed environmental professional to have been performed in

179 accordance with the remediation standards, [or] (B) the commissioner
180 has determined in writing or a licensed environmental professional has
181 verified pursuant to section 22a-133x or section 22a-134a in a writing
182 attached to the form that no remediation is necessary to achieve
183 compliance with the remediation standards, or (C) stating a Form IV
184 verification has been submitted to the commissioner that since the date
185 of the submission of said Form IV, no discharge, spillage, uncontrolled
186 loss, seepage or filtration of hazardous waste or a hazardous substance
187 has occurred at the establishment, which certification is based on an
188 investigation of the parcel in accordance with prevailing standards and
189 guidelines;

190 (12) "Form III" means a written certification signed by a certifying
191 party on a form prescribed and provided by the commissioner, which
192 certification states that (A) a discharge, spillage, uncontrolled loss,
193 seepage or filtration of hazardous waste or a hazardous substance has
194 occurred at the [parcel] establishment or the environmental conditions
195 at the [parcel] establishment are unknown, and (B) that the person
196 signing the certification agrees to investigate the parcel in accordance
197 with [the standards adopted by the commissioner in regulations
198 adopted in accordance with the provisions of chapter 54 or, until
199 January 1, 2002, or the adoption of such regulations, whichever is
200 sooner, in accordance with] prevailing standards and guidelines and to
201 remediate [the parcel] pollution caused by any release at the
202 establishment in accordance with the remediation standards;

203 (13) "Form IV" means a written certification signed by one or more
204 certifying parties on a form prescribed and provided by the
205 commissioner and which is accompanied by a written determination
206 by the commissioner or by a licensed environmental professional
207 pursuant to section 22a-134a or 22a-133x, which certification states and
208 is accompanied by documentation demonstrating that the parcel has
209 been investigated in accordance with [the standards adopted by the
210 commissioner in regulations adopted in accordance with the
211 provisions of chapter 54 or, until January 1, 2002, or the adoption of
212 such regulations, whichever is sooner, in accordance with] prevailing

213 standards and guidelines and that (A) there has been a discharge,
214 spillage, uncontrolled loss, seepage or filtration of hazardous waste or
215 a hazardous substance on the [parcel] establishment, and (B) all actions
216 to remediate [the parcel] any pollution caused by any release at the
217 establishment have been taken in accordance with the remediation
218 standards except postremediation monitoring, natural attenuation
219 monitoring or the recording of an environmental land use restriction,
220 and (C) the person or persons signing the certification agree, in
221 accordance with the representations made in the form, to conduct
222 postremediation monitoring or natural attenuation monitoring in
223 accordance with the remediation standards and if further investigation
224 and remediation are necessary [based upon the results of such
225 monitoring,] to take further action to investigate the [parcel]
226 establishment in accordance with [the standards adopted by the
227 commissioner in regulations adopted in accordance with the
228 provisions of chapter 54 or, until January 1, 2002, or the adoption of
229 such regulations, whichever is sooner, in accordance with] prevailing
230 standards and guidelines and to remediate the [parcel] establishment
231 in accordance with the remediation standards;

232 (14) "Person" means person, as defined in section 22a-2;

233 (15) "Remediate" means to contain, remove or abate pollution,
234 potential sources of pollution and substances in soil or sediment which
235 pose an unacceptable risk to human health or the environment and
236 includes, but is not limited to, the reduction of pollution by natural
237 attenuation;

238 (16) "Licensed environmental professional" means an environmental
239 professional licensed pursuant to section 22a-133v;

240 (17) "Environmental condition assessment form" means a form
241 prescribed and provided by the commissioner, prepared under the
242 supervision of a licensed environmental professional, and [prepared]
243 executed by (A) the certifying party under sections 22a-134 to 22a-134e,
244 inclusive, or (B) the owner of the property under section 22a-133x

245 which form describes the environmental conditions at the [parcel]
246 establishment;

247 (18) "Pollution" means pollution, as defined in section 22a-423;

248 (19) "Verification" means the rendering of a written opinion by a
249 licensed environmental professional that an investigation of the parcel
250 has been performed in accordance with prevailing standards and
251 guidelines and that the [parcel] establishment has been remediated in
252 accordance with the remediation standards;

253 (20) "Vehicle" means [an automobile, bus, truck or truck tractor, but
254 does not mean] any motorized device for conveying persons or objects
255 except for an aircraft, boat, railroad car or engine, or farm tractor;

256 (21) "Business operation" means any business that has, or any series
257 of substantially similar businesses that have operated continuously or
258 with only brief interruption on the same parcel, either with a single
259 owner or successive owners;

260 (22) "Corporate reorganization not substantially affecting the
261 ownership of an establishment" means implementation of a business
262 plan to restructure a corporation through a merger, spin-off or other
263 plan or reorganization under which the direct owner of the
264 establishment does not change;

265 (23) "Form IV verification" means the rendering of a written opinion
266 by a licensed environmental professional, after a Form IV has been
267 filed, that postremediation monitoring, natural attenuation or the
268 recording of an environmental land use restriction has been completed
269 in accordance with the Form IV;

270 (24) "Hazardous substance" means hazardous substance, as defined
271 in Section 101 of the Comprehensive Environmental Response,
272 Compensation, and Liability Act of 1980, 42 USC Section 9601, or a
273 petroleum product or by-product for which there are remediation
274 standards adopted pursuant to section 22a-133k or for which such

275 remediation standards have a process for calculating the numeric
276 criteria of such substance;

277 (25) "Sediment" means unconsolidated material occurring in a
278 stream, pond, wetland estuary or other water body.

279 Sec. 3. Section 22a-134a of the general statutes is repealed and the
280 following is substituted in lieu thereof:

281 (a) No person shall transfer an establishment except in accordance
282 with the provisions of sections 22a-134 to 22a-134e, inclusive, as
283 amended by this act.

284 [(b) A lien pursuant to section 22a-452a shall not be placed against
285 real estate on which a service station was transferred and in operation
286 on or after May 1, 1967, provided the transferor certifies to the
287 transferee that (1) the service station, or any part thereof, complies
288 with regulations adopted by the Commissioner of Environmental
289 Protection pursuant to subsection (d) of section 22a-449 concerning
290 design, construction, installation and maintenance of underground
291 facilities storing oil or petroleum liquids, (2) there has been no spill on
292 the real estate or any spill has been remediated in accordance with
293 procedures approved by the commissioner and the commissioner has
294 determined that such spill does not pose a threat to human health or
295 safety or to the environment which would warrant containment or
296 removal or other mitigation measures and (3) any hazardous waste or
297 oil or petroleum liquid remaining on the real estate is being managed
298 in accordance with the provisions of this chapter and chapter 446k and
299 regulations adopted thereunder.]

300 [(c)] (b) The commissioner may adopt regulations, in accordance
301 with the provisions of chapter 54, to implement the provisions of this
302 section.

303 [(d)] (c) Prior to transferring an establishment, the transferor shall
304 submit to the transferee a complete Form I or a Form II and, no later
305 than ten days after the transfer, shall submit a copy of such Form I or

306 Form II to the commissioner. The commissioner shall notify the
307 transferor no later than ninety days after the submission of such Form I
308 or Form II if the commissioner deems the Form I or Form II
309 incomplete. If the transferor is unable to submit a Form I or a Form II
310 to the transferee, the [certifying party] transferor shall, prior to the
311 transfer, [prepare and sign a] submit a complete Form III or Form IV [,
312 and the transferor shall submit a copy of such Form III or Form IV]
313 prepared and signed by a party associated with the transfer to the
314 transferee and, no later than ten days after the transfer, shall submit a
315 copy of such Form III or Form IV to the commissioner. If no other
316 party associated with the transfer of an establishment prepares and
317 signs the proper form as a certifying party, the transferor shall have
318 the obligation for such preparation and signing.

319 [(e) Any person submitting a] (d) The certifying party to a Form I,
320 Form III or Form IV [to the commissioner] shall, upon receipt of a
321 written request from the commissioner, provide to the commissioner
322 copies of all technical plans, reports and other supporting
323 documentation relating to the investigation of the parcel or
324 remediation of the establishment as specified in the commissioner's
325 written request simultaneously submit to the commissioner a complete
326 environmental condition assessment form and shall certify to the
327 commissioner, in writing, that the information contained in such form
328 is correct and accurate to the best of [his] the certifying party's
329 knowledge and belief.

330 [(f) Within fifteen days of his] (e) No later than thirty days after
331 receipt of a Form III or Form IV, the commissioner shall notify the
332 certifying party whether the form is complete or incomplete. Within
333 forty-five days of [his] receipt of a complete Form III or IV, the
334 commissioner shall notify the certifying party in writing whether
335 review and approval of the remediation by the commissioner will be
336 required, or whether a licensed environmental professional may verify
337 that the investigation has been performed in accordance with [the
338 standards adopted by the commissioner in regulations adopted in
339 accordance with the provisions of chapter 54 or, until January 1, 2002,

340 or the adoption of such regulations, whichever is sooner, in accordance
341 with] prevailing standards and guidelines and that the remediation
342 has been performed in accordance with the remediation standards.
343 Any person who submitted a Form III to the commissioner prior to
344 October 1, 1995, [for a parcel which is not the subject of an order,
345 consent order or stipulated judgment issued or entered into pursuant
346 to sections 22a-134 to 22a-134e, inclusive,] may submit an
347 environmental condition assessment form to the commissioner. The
348 commissioner shall, within forty-five days of receipt of such form,
349 notify the certifying party whether approval of the remediation by the
350 commissioner will be required or whether a licensed environmental
351 professional may verify that the remediation has been performed in
352 accordance with the remediation standards.

353 [(g)] (f) In determining whether review and approval of the
354 remediation by the commissioner will be required, or whether a
355 licensed environmental professional may verify that the remediation
356 has been performed in accordance with the remediation standards, the
357 commissioner shall consider: (1) The potential risk to human health
358 and the environment posed by any discharge, spillage, uncontrolled
359 loss, seepage or filtration of hazardous waste [on the parcel] or a
360 hazardous substance at the establishment; (2) the degree of
361 environmental investigation at the parcel; (3) the proximity of the
362 [parcel] establishment to significant natural resources; (4) the character
363 of the land uses surrounding the [parcel] establishment; (5) the
364 complexity of the environmental condition of the [parcel]
365 establishment; and (6) any other factor the commissioner deems
366 relevant.

367 [(h)] (g) If the commissioner notifies the certifying party to a Form
368 III or Form IV that a licensed environmental professional may verify
369 the remediation, [the] such certifying party shall, on or before thirty
370 days of the receipt of such notice or such later date as may be
371 approved in writing by the commissioner, submit a schedule for
372 investigating and remediating the [parcel] establishment. Such
373 schedule shall, unless a later date is specified in writing by the

374 commissioner, provide that the investigation shall be completed within
375 two years of the date of receipt of such notice and that remediation
376 shall be initiated within three years of the date of receipt of such
377 notice. The schedule shall also include a schedule for providing public
378 notice of the remediation prior to the initiation of such remediation in
379 accordance with subsection [(j)] (i) of this section. [The commissioner
380 may require the certifying party to submit copies of technical plans
381 and reports related to the investigation and remediation at the parcel
382 and may notify the] The commissioner shall notify such certifying
383 party if the commissioner determines that the commissioner's review
384 and written approval is necessary. [The commissioner shall require the
385 certifying party to submit to him all technical plans and reports related
386 to the investigation and remediation of the parcel if the commissioner
387 receives a written request from any person for such information. The]
388 Such certifying party shall investigate the parcel and remediate the
389 [parcel] establishment in accordance with the proposed schedule. [The]
390 Such certifying party shall submit to the commissioner an independent
391 verification by a licensed environmental professional that the [parcel]
392 establishment has been remediated in accordance with the remediation
393 standards, and as applicable, a Form IV verification.

394 [(i)] (h) If the commissioner notifies the certifying party to a Form III
395 or Form IV that [his] the commissioner's review and written approval
396 of the investigation of the parcel and remediation of the [parcel]
397 establishment is required, [the] such certifying party shall, on or before
398 thirty days of the receipt of such notice or such later date as may be
399 approved in writing by the commissioner, submit for the
400 commissioner's review and written approval a proposed schedule for:
401 (1) Investigating the parcel and remediating the [parcel] establishment;
402 (2) submitting to the commissioner scopes of work, technical plans,
403 technical reports and progress reports related to such investigation and
404 remediation; and (3) providing public notice of the remediation prior
405 to the initiation of such remediation in accordance with subsection [(j)]
406 (i) of this section. Upon the commissioner's approval of such schedule,
407 [the] such certifying party shall, in accordance with the approved

408 schedule, submit scopes of work, technical plans, technical reports
409 and progress reports to the commissioner for [his] the commissioner's
410 review and written approval. [The] Such certifying party shall perform
411 all actions identified in the approved scopes of work, technical plans,
412 technical reports and progress reports in accordance with the
413 approved schedule. The commissioner may approve in writing any
414 modification proposed in writing by [the] such certifying party to such
415 schedule or investigation and remediation. The commissioner may, at
416 any time, notify [the] such certifying party in writing that the
417 commissioner's review and written approval is not required and that a
418 licensed environmental professional may verify that the remediation
419 has been performed in accordance with the remediation standards.

420 [(j)] (i) The certifying party to a Form III or Form IV shall (1) publish
421 notice of the remediation, in accordance with the schedule submitted
422 pursuant to this section, in a newspaper having a substantial
423 circulation in the area affected by the establishment, (2) notify the
424 director of health of the municipality where the [parcel] establishment
425 is located of the remediation, and (3) either (A) erect and maintain for
426 at least thirty days in a legible condition a sign not less than six feet by
427 four feet on the [parcel] establishment, which sign shall be clearly
428 visible from the public highway, and shall include the words
429 "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR
430 FURTHER INFORMATION CONTACT:" and include a telephone
431 number for an office from which any interested person may obtain
432 additional information about the remediation, or (B) mail notice of the
433 remediation to each owner of record of property which abuts the
434 [parcel] establishment, at the address for such property on the last-
435 completed grand list of the municipality where the [parcel]
436 establishment is located.

437 [(k)] (j) The commissioner may issue an order to any person who
438 fails to comply with any provision of sections 22a-134 to 22a-134e,
439 inclusive, as amended by this act, including, but not limited to, any
440 person who [improperly files a Form I or Form II] fails to file a form, or
441 files an incomplete or incorrect form or to any person who fails to

442 carry out any activities to which that person agreed in a Form III or
443 Form IV. [or may] If no form is filed or if an incomplete or incorrect
444 form is filed for a transfer of an establishment, the commissioner may
445 issue an order to the transferor, the transferee, or both, requiring a
446 filing. The commissioner may also request that the Attorney General
447 bring an action in the superior court for the judicial district of Hartford
448 to enjoin any person who fails to comply with any provision of
449 sections 22a-134 to 22a-134e, inclusive, as amended by this act,
450 including, but not limited to, any person who fails to file a form,
451 improperly files a Form I, [or] Form II, Form III or Form IV or the
452 certifying party to a Form III or Form IV to take any actions necessary
453 to prevent or abate any pollution at, or emanating from, the subject
454 [parcel] establishment. Any person to whom such an order is issued
455 may appeal such order in accordance with the procedures set forth in
456 sections 22a-436 and 22a-437.

457 [(l)] (k) Notwithstanding the exemptions provided in subsection (a)
458 of section 22a-134, nothing contained in sections 22a-134 to 22a-134e,
459 inclusive, as amended by this act, shall be construed as creating an
460 innocent landowner defense for purposes of section 22a-452d.

461 [(m)] (l) Notwithstanding any other provisions of this section, no
462 person shall be required to comply with the provisions of sections
463 22a-134 to 22a-134e, inclusive, as amended by this act, when
464 transferring real property (1) (A) for which a Form I or Form II has
465 been filed on or after October 1, 1995, or (B) for which a Form III or
466 Form IV has been filed and which has been remediated and such
467 remediation has been approved in writing by the commissioner or
468 verified in writing in accordance with this section by a licensed
469 environmental professional that an investigation has been performed
470 in accordance with [the standards adopted by the commissioner in
471 regulations adopted in accordance with the provisions of chapter 54 or,
472 until January 1, 2002, or the adoption of such regulations, whichever is
473 sooner, in accordance with] prevailing standards and guidelines and
474 that the remediation has been performed in accordance with the
475 remediation standards, and (2) at which no activities described in

476 subdivision (3) of section 22a-134 have been conducted since the date
477 of such approval or verification or the date on which the Form I or
478 Form II was filed.

479 (m) Failure of the commissioner to notify any party in accordance
480 with the provisions of this section in no way limits the ability of the
481 commissioner to enforce the provisions of sections 22a-134 to 22a-134f,
482 inclusive, as amended by this act.

483 Sec. 4. Section 22a-134d of the general statutes is repealed and the
484 following is substituted in lieu thereof:

485 [Any person who knowingly gives or causes to be given any false
486 information on any document required by sections 22a-134 to 22a-134e,
487 inclusive, or section 22a-133y or who fails to comply with the
488 provisions of said sections shall forfeit to the state a sum not to exceed
489 one hundred thousand dollars. A civil action shall be instituted to
490 recover such forfeiture.]

491 Any person who violates any provision of sections 22a-134a to 22a-
492 134e, inclusive, as amended by this act, or regulations issued in
493 accordance with the provisions of said sections shall be assessed a civil
494 penalty or shall be fined in accordance with section 22a-438.

495 Sec. 5. Subsection (j) of section 22a-134e of the general statutes is
496 repealed and the following is substituted in lieu thereof:

497 (j) The fees specified in this section shall be paid by [the transferee
498 of the establishment except that the fee for a Form III or Form IV shall
499 be paid, on and after July 1, 1994, by] the certifying party.

500 Sec. 6. Subsection (m) of section 22a-134e of the general statutes is
501 repealed and the following is substituted in lieu thereof:

502 (m) On and after October 1, 1995, the fee for filing a Form III or
503 Form IV shall be due in accordance with the following schedule: An
504 initial fee of two thousand dollars shall be submitted to the
505 commissioner with the filing of a Form III or Form IV. If a licensed

506 environmental professional verifies the remediation of the [parcel]
507 establishment and the commissioner has not notified the certifying
508 party that the commissioner's written approval of the remediation is
509 required, no additional fee shall be due. If the commissioner notifies
510 the certifying party that the commissioner's written approval of the
511 remediation is required, the balance of the total fee shall be due prior
512 to the commissioner's issuance of [his] the commissioner's final
513 approval of the remediation.

514 Sec. 7. Subsection (p) of section 22a-134e of the general statutes is
515 repealed and the following is substituted in lieu thereof:

516 (p) Notwithstanding any other provision of this section, the fee for
517 filing a Form II or Form IV for [a parcel] an establishment for which
518 the commissioner has issued a written approval of a remediation
519 under subsection (c) of section 22a-133x within three years of the date
520 of the filing of the form shall be the total fee for a Form III specified in
521 subsection (n) of this section and shall be due upon the filing of the
522 Form II or Form IV.

523 Sec. 8. (NEW) Any person who has submitted a Form I, Form II,
524 Form III or Form IV to the Commissioner of Environmental Protection
525 pursuant to section 22a-134a of the general statutes, as amended by
526 this act, may petition the commissioner to withdraw such form. Such
527 petitioner shall notify the transferor, the transferee and the certifying
528 party by certified mail. The petitioner shall make every reasonable
529 effort to identify the address of such transferor, transferee and
530 certifying party. The transferor, transferee and certifying party shall
531 have thirty days to submit to the commissioner written objections to
532 such petition. The commissioner may approve the petition if it
533 demonstrates to the commissioner's satisfaction that the property or
534 business was not an establishment or the transaction was not a transfer
535 at the time the form was submitted. If the commissioner approves the
536 petition, no further action is required by the certifying party with
537 respect to its obligations under the form, but the form and the fee shall
538 not be returned.

539 Sec. 9. (NEW) A lien pursuant to section 22a-452a of the general
540 statutes shall not be placed against real estate on which a service
541 station was transferred and in operation on or after May 1, 1967,
542 provided the transferor certifies to the transferee that (1) the service
543 station, or any part thereof, complies with regulations adopted by the
544 Commissioner of Environmental Protection pursuant to subsection (d)
545 of section 22a-449 of the general statutes concerning design,
546 construction, installation and maintenance of underground facilities
547 storing oil or petroleum liquids, (2) there has been no spill on the real
548 estate or any spill has been remediated in accordance with procedures
549 approved by the commissioner and the commissioner has determined
550 that such spill does not pose a threat to human health or safety or to
551 the environment which would warrant containment or removal or
552 other mitigation measures, and (3) any hazardous waste or oil or
553 petroleum liquid remaining on the real estate is being managed in
554 accordance with the provisions of chapter 446k of the general statutes
555 and regulations adopted thereunder.

556 Sec. 10. Section 22a-6g of the general statutes is repealed and the
557 following is substituted in lieu thereof:

558 [Notwithstanding any other provision of this title or regulations
559 adopted hereunder, any]

560 (a) Any person who submits an application to the Commissioner of
561 Environmental Protection for any permit or other license pursuant to
562 section 22a-32, 22a-39, 22a-174, 22a-208a, 22a-342, 22a-361, 22a-368,
563 22a-403 or 22a-430, subsection (b) or (c) of section 22a-449, section 22a-
564 454 or Section 401 of the federal Water Pollution Control Act (33 USC
565 466 et seq.), except an application for authorization under a general
566 permit shall: (1) Include with such application a signed statement
567 certifying that the applicant will publish notice of such application on
568 a form supplied by the commissioner in accordance with this section;
569 (2) publish notice of such application in a newspaper of general
570 circulation in the affected area; (3) send the commissioner a certified
571 copy of such notice as it appeared in the newspaper; and (4) notify the

572 chief elected official of the municipality in which the regulated activity
573 is proposed. Such notices shall include: (A) The name and mailing
574 address of the applicant and the address of the location at which the
575 proposed activity will take place; (B) the application number, if
576 available; (C) the type of permit sought, including a reference to the
577 applicable statute or regulation; (D) a description of the activity for
578 which a permit is sought; (E) a description of the location of the
579 proposed activity and any natural resources affected thereby; (F) the
580 name, address and telephone number of any agent of the applicant
581 from whom interested persons may obtain copies of the application; []
582 and (G) a statement that the application is available for inspection at
583 the office of the Department of Environmental Protection. The
584 commissioner shall not process an application until the applicant has
585 submitted to the commissioner a copy of the notice required by this
586 section. The provisions of this section shall not apply to discharges
587 exempted from the notice requirement by the commissioner pursuant
588 to subsection (b) of section 22a-430, to hazardous waste transporter
589 permits issued pursuant to section 22a-454 or to special waste
590 authorizations issued pursuant to section 22a-209 and regulations
591 adopted thereunder.

592 (b) Notwithstanding any other provision of this title or any
593 regulation adopted pursuant to this title, the following applications are
594 exempt from the provisions of subsection (a) of this section: (1) An
595 application for authorization under a general permit; (2) an application
596 for a minor permit modification for sources permitted under Title V of
597 the federal Clean Air Act Amendments of 1990 in accordance with 40
598 CFR 70.7; and (3) an application for a minor permit modification or
599 revision if the Commissioner of Environmental Protection has adopted
600 regulations, in accordance with the provisions of chapter 54,
601 establishing criteria to delineate applications for minor permit
602 modifications or revisions from those applications subject to the
603 requirements of subsection (a) of this section.

604 Sec. 11. Section 22a-6h of the general statutes is repealed and the
605 following is substituted in lieu thereof:

606 (a) The Commissioner of Environmental Protection, at least thirty
607 days before approving or denying an application under section 22a-32,
608 22a-39, 22a-174, 22a-208a, 22a-342, 22a-361, 22a-368, 22a-403 or 22a-430,
609 subsection (b) or (c) of section 22a-449, section 22a-454 or Section 401 of
610 the federal Water Pollution Control Act (33 USC 466 et seq.), shall
611 publish or cause to be published, at the applicant's expense, once in a
612 newspaper having a substantial circulation in the affected area notice
613 of [his] the commissioner's tentative determination regarding such
614 application. Such notice shall include: (1) The name and mailing
615 address of the applicant and the address of the location of the
616 proposed activity; (2) the application number; (3) the tentative decision
617 regarding the application; (4) the type of permit or other authorization
618 sought, including a reference to the applicable statute or regulation; (5)
619 a description of the location of the proposed activity and any natural
620 resources affected thereby; (6) the name, address and telephone
621 number of any agent of the applicant from whom interested persons
622 may obtain copies of the application; (7) a brief description of all
623 opportunities for public participation provided by statute or
624 regulation, including the length of time available for submission of
625 public comments to the commissioner on the application; and (8) such
626 additional information as the commissioner deems necessary to
627 comply with any provision of this title or regulations adopted
628 hereunder, or with the federal Clean Air Act, federal Clean Water Act
629 or federal Resource Conservation and Recovery Act. The commissioner
630 shall further give notice of such determination to the chief elected
631 official of the municipality in which the regulated activity is proposed.
632 Nothing in this section shall preclude the commissioner from giving
633 such additional notice as may be required by any other provision of
634 this title or regulations adopted hereunder, or by the federal Clean Air
635 Act, federal Clean Water Act or federal Resource Conservation and
636 Recovery Act. The provisions of this section shall not apply to
637 discharges exempted from the notice requirement by the commissioner
638 pursuant to subsection (b) of section 22a-430, to hazardous waste
639 transporter permits issued pursuant to section 22a-454 or to special
640 waste authorizations issued pursuant to section 22a-209 and

641 regulations adopted thereunder.

642 (b) For the purposes of this section, "application" means a request
643 for a license or renewal thereof or for any permit or modification of a
644 license or permit or renewal thereof if the modification is sought by the
645 licensee.

646 (c) Notwithstanding any other provision of this title or any
647 regulation adopted pursuant to this title, the following applications are
648 exempt from the provisions of subsection (a) of this section: (1) An
649 application for a minor permit modification for sources permitted
650 under Title V of the federal Clean Air Act Amendments of 1990 in
651 accordance with 40 CFR 70.7; or (2) an application for a minor permit
652 modification or revision if the Commissioner of Environmental
653 Protection has adopted regulations, in accordance with the provisions
654 of chapter 54, establishing criteria to delineate applications for minor
655 permit modifications or revisions from those applications subject to the
656 requirements of subsection (a) of this section.

657 Sec. 12. Section 12-63f of the general statutes is repealed and the
658 following is substituted in lieu thereof:

659 For the five assessment years commencing with the first assessment
660 and collection of the tax imposed under this chapter on a parcel of real
661 property which assessment and collection follows an approval of a
662 final remedial action report by the Commissioner of Environmental
663 Protection or a filing of such a report by a licensed environmental
664 professional regarding such property other than any such approval or
665 filing made under section 22a-133m, or if no such report has been
666 approved or filed, a filing of a Form IV under section 22a-134a, and
667 which assessment and collection occurs on or after January 1, 1999, and
668 before January 1, 2006, twenty per cent of any amount received by a
669 municipality from such assessment in excess of the highest amount
670 received from an assessment for any one of the three fiscal years
671 preceding such approval or filing shall be paid to the State Treasurer
672 and shall be deposited into the Special Contaminated Property

673 Remediation and Insurance Fund established under section 22a-133t
674 provided this section shall not apply to taxes imposed on personal
675 property, penalties or interest. For the purposes of this section,
676 "municipality" means any town, consolidated town and city or
677 consolidated town and borough.

678 Sec. 13. Subsection (b) of section 22a-6k of the general statutes is
679 repealed and the following is substituted in lieu thereof:

680 (b) The commissioner may issue a temporary authorization for any
681 activity for which the commissioner has authority to issue a general
682 permit under section 22a-174, 22a-208a, 22a-361, [22a-368] 22a-378a,
683 22a-411, 22a-430b or 22a-454 provided [he] the commissioner finds that
684 (1) such activity will not continue for more than thirty days; (2) such
685 activity does not pose a significant threat to human health or the
686 environment; (3) such authorization is necessary to protect human
687 health or the environment or is otherwise necessary to protect the
688 public interest; and (4) such authorization is not inconsistent with the
689 federal Water Pollution Control Act, the federal Rivers and Harbors
690 Act, the federal Clean Air Act or the federal Resource Conservation
691 and Recovery Act. No temporary authorization shall be renewed more
692 than once, and no such authorization shall be issued for an activity
693 which has been authorized by a temporary authorization during the
694 previous twelve months. Any person seeking a temporary
695 authorization shall submit to the commissioner sufficient information
696 to allow the commissioner to make the determination set forth herein.
697 A temporary authorization shall be limited by any conditions the
698 commissioner deems necessary to adequately protect human health
699 and the environment. Summary suspension of a temporary
700 authorization may be ordered in accordance with subsection (c) of
701 section 4-182. The commissioner may assess a fee for a temporary
702 authorization issued pursuant to this subsection. Such fee shall be of
703 an amount equal to the equivalent existing permit fee for the activity
704 authorized. The commissioner may reduce the fee required pursuant
705 to this subsection if good cause is shown. The fee required pursuant to
706 this subsection shall be paid before the issuance of the temporary

707 authorization. The commissioner may, if good cause is shown, allow
708 late payment of the fee required by this subsection provided such fee
709 shall be paid no later than ten days after the issuance of the temporary
710 authorization.

711 Sec. 14. Section 22a-6t of the general statutes is repealed.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Minimal

Affected Agencies: Department of Environmental Protection,
Department of Correction

Municipal Impact: See Explanation Below

Explanation**State and Municipal Impact:**

It is anticipated that the overall net fiscal impact due to the procedural changes in submittal/filing of forms (I, II, III or IV) and exemptions and modifications in the Transfer Act is anticipated to be minimal. Any increase in the filing of one form instead of another, and any resulting workload adjustment will be offset by fees.

The bill exempts, under certain circumstances, owners of real estate from liability to non-governmental entities for damages due to pollution on the land, which took place before the land was acquired. The limiting of liability is not anticipated to apply to many circumstances and result in increased costs to the state.

The changes in the penalty provisions are anticipated to minimally impact revenue. The current fine is up to \$100,000 for certain violations and instead, the penalty will now range from a fine up to \$25,000 to up to \$50,000 and or imprisonment for up to 3 years. The Governor's FY 01 proposed budget includes both additional operating and bonding dollars for the expansion of the Department of Correction (DOC), as well as dollars to annualize funding for inmates being

housed out of state. Although it is not anticipated that the proposal as described in the bill will result in a significant increase to the DOC inmate population, it should be noted that the establishment of new crimes, particularly those with mandatory sentences, will eventually result in the need for additional resources.

The exemption of certain permit applications and the tentative determinations on those applications from statutory notice requirements, is anticipated to minimally reduce the administrative workload of the DEP and municipalities.

Allowing the Commissioner of the DEP to issue temporary authorizations for broader activities will increase agency efficiency.

Requiring that municipalities pay 20% of the increased property tax revenue into the Special Contaminated Property Remediation and Insurance Fund (SCPRIF) upon final approval or certification of the full remediation of the property as is current law or when a Form IV (active remediation is complete) is filed under the Property Transfer Act, whichever is earlier, will accelerate the revenues deposited into the SCPRIF which will accelerate the potential short-term revenue loss to the towns. The amount of accelerated revenue is unknown at this time. It is anticipated that the short-term revenue loss may ultimately result in grand list expansion, since the goal of the program is redevelopment of contaminated sites. Payment into the SCPRIF is for 5 years. No revenues from increased property taxes have been deposited into the SCPRIF to date.

Elimination of some of the DEP's reporting requirements will minimally decrease the administrative workload.

House "A" adds provisions concerning statutory notice requirements and issuance of temporary authorizations and reporting, which minimally reduces workload. The amendment also adds the provisions concerning SCPRIF and the associated revenue implications and makes technical, procedural and clarifying changes to the bill.

OLR BILL ANALYSIS

sHB 6914 (as amended by House "A")*

AN ACT CONCERNING THIRD PARTY LIABILITY AND REVISIONS TO THE TRANSFER ACT.**SUMMARY:**

This bill exempts, under certain circumstances, the owner of real estate from liability to non-governmental entities for damages arising from pollution on his land that existed before he acquired title to it.

The bill extensively amends the Transfer Act, which regulates the sale or other transfer of (1) property where hazardous waste was generated or processed, and (2) dry cleaners and certain other businesses. It exempts some transactions from the act while including others.

Under current law, the transferor must complete one of four forms before transferring the property. The type of form that is filed, and the resulting obligations of the person signing the form, vary by whether there was a hazardous waste release on the property and, if so, whether it was remediated. The bill changes the circumstances under which these forms can be filed, who can sign them, and the obligations of the signer. The bill makes many procedural changes in how parties subject to the act and the Department of Environmental Protection (DEP) must operate. It modifies the penalties that apply to violations of the law.

The bill expands the act to cover releases of certain hazardous substances in addition to the hazardous wastes already covered. As a result, it reduces the circumstances when a Form I, which indicates that there has not been a release on the property, can be filed. The bill generally requires the remediation of establishments, rather than parcels, as required under current law. Thus if a dry cleaner is located in a strip mall that is transferred, the bill requires that just the dry cleaning establishment, rather than the entire mall, be remediated.

The bill makes many minor changes to the Transfer Act.

The bill exempts from statutory notice requirements: (1) applications for certain minor modifications of DEP permits and (2) DEP's tentative determinations on these applications.

The bill broadens the DEP commissioner's power to issue temporary authorizations. It expands a provision under which municipalities must pay to the state part of the increased property tax derived from contaminated sites that have been cleaned up. The payments go into the Special Contaminated Property Remediation and Insurance Fund.

The bill eliminates a requirement that DEP report on its enforcement activities to the Environment Committee by February 1 annually.

*House Amendment "A" (1) specifies that the bill's liability protections do not affect a property owner's liability for the pollution he causes, (2) narrows the bill's definition of hazardous substances, (3) exempts vehicle painting shops from the Transfer Act, (4) limits the circumstances under which a certifying party must provide DEP with technical plans and related documents, (5) deletes a requirement that DEP report to the legislature annually on its enforcement actions, and (6) makes various minor changes. The amendment also adds the provisions on notice requirements, temporary authorizations, and property taxes on remediated sites.

EFFECTIVE DATE: October 1, 2001

LANDOWNER LIABILITY

The bill exempts, under certain circumstances, owners of real property from liability, other than to Connecticut, another state, or the federal government, for pollution from the property that occurred before the owner took title to the property. To be exempt, the owner may not:

1. have created a condition or facility that reasonably can be expected to pollute the state's water in violation of CGS § 22a-432;
2. have been responsible, under any other provision of state law, for creating any pollution or source of pollution on the property; and
3. be affiliated with the person responsible for the pollution through any familial or business relationship other than through financing

or conveying an interest in the property to the new owner.

In addition, the DEP commissioner must have approved, in writing, an investigation of the earlier pollution conducted (1) by a DEP-licensed environmental professional (LEP) and (2) in accordance with prevailing standards and guidelines. The commissioner must also have approved the LEP's final remediation action report, which demonstrates that the remediation of the pollution complies with DEP standards.

The bill applies to liability under Connecticut statutory and common law with regard to any pollution or source of pollution emanating from the property. The bill does not affect the owner's liability for failing to comply with an environmental land use restriction or conditions for a variance for the property created under state law. Nor does it affect his liability for any pollution or pollution conditions on his property or emanating from it that the owner caused.

TRANSFER ACT

Definitions

The Transfer Act applies to "establishments," i.e. property where a business generated more than 100 kilograms (220 pounds) of hazardous wastes in any one month after November 18, 1980. The law exempts from this definition property where this amount of waste was generated by remediation of polluted soil. The bill expands this exception to include remediation of contaminated sediment or groundwater.

Establishments also include properties where hazardous waste generated off-site by another party is recycled, reclaimed, reused, stored, handled, treated, transported, or disposed of. The bill extends this provision to cover properties where waste generated off-site by the property owner is so processed. By law, establishments also include property where dry cleaners, furniture strippers, and vehicle body repair shops were located on or after May 1, 1967. The bill exempts from the definitions of establishments, and thus the Transfer Act, property where a vehicle painting shop was located on or after May 1, 1967.

As described below, the bill expands the provisions of the act to cover

releases of hazardous substances at establishments. These substances include a broad range of materials regulated under federal and state law, including petroleum and its by-products. The bill applies to substances that have remediation standards set by state law. The bill also applies to substances “for which such remediation standards have a process for calculating the numeric criteria of such substance.” (It is unclear what this provision means.)

By law, the person who files a Form III or IV for a contaminated property is called the “certifying party”. This person must be associated with the transfer. The bill expands this definition of parties associated with the transfer to include (1) the establishment’s past owner, (2) its past or present operator (business operators are already included), and (3) the owner of the property on which the establishment is located. Under current law, the certifying party must agree to remediate the parcel. The bill instead requires him to remediate pollution caused by any release at the establishment. This provision and others in the bill appear to make the certifying party potentially responsible for remediating pollution that migrates off-site. The bill also refers to the person signing a Form I or II, but does not require him to remediate the parcel.

Exemptions from the Transfer Act

The bill exempts from the Transfer Act :

1. the acquisition of an establishment by a governmental or quasi-governmental authority,
2. the conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the interest of the transferor’s spouse or blood relative, and
3. the issuance of a subsequent series of securities of the entity that owns or operates the establishment (the original issuance is already exempt).

The bill narrows several existing exemptions. Current law exempts conveyances in which the transferred part of the property was not contaminated by a hazardous waste release and meets certain other conditions. The bill subjects such conveyances to the Transfer Act if the transferred part of the property was contaminated by a hazardous

substances release. Current law provides exemptions for property conveyances through foreclosure and conveyance of a security interest in the property from the Transfer Act. The bill more narrowly defines the types of transactions that qualify for these exemptions.

The bill modifies other exemptions. Current law exempts any lease renewal, and the conveyance, assignment, or termination of a lease for less than 25 years. The bill instead exempts executions of leases for a period of up to 99 years. While most lease renewals involve executions, the other transactions generally do not.

The law exempts a corporate reorganization that does not substantially affect the establishment's ownership. Current law, gives as examples of such reorganizations, dividend and stock distributions arising from a merger. The bill instead specifies that such reorganizations restructure a corporation by merger, spin-off, or other means, in which the establishment's direct owner remains the same are exempt. Current law exempts the transfer of stock or other ownership interests representing less than a majority of the voting power of the establishment's owner or operator. The bill instead exempts transfers of less than 40% of the entity's ownership.

Forms I, II, III, and IV

Under current law, one of four forms must be filed with DEP before the transfer takes place, with the type of form depending on whether there has been a hazardous waste spill on the property, and if so, whether it has been remediated.

Under current law, a Form I states, based on an investigation that complies with statutory requirements, that there has been no hazardous waste releases on the parcel. The bill instead only allows this form to be filed if there has been no spill, at the establishment, of as defined in the bill hazardous wastes or hazardous substances, as defined in the bill.

Under current law, a Form II is filed if there has been a hazardous waste spill, but (1) it has been remediated or (2) DEP has determined that no remediation is needed to comply with its remediation standards. The bill extends these provisions to include properties where there has been a spill of a hazardous substance that has been remediated or determined by DEP not to need remediation. The bill

also expands the circumstances in which this form is filed to include the transfers of property for which (1) a Form IV (described below) has been filed with the commissioner and (2) since that time there has been no spill, based on an investigation of the parcel, of hazardous wastes or hazardous substances. The investigation must meet the same standards as apply to an investigation conducted in connection with a Form I filing.

Under current law, a Form III is filed when (1) a hazardous waste spill has occurred on the property or its environmental condition is unknown, and (2) the person signing the form agrees to investigate the property and to remediate it according to DEP's standards. The bill expands the applicability of this form to include properties where there has been a hazardous substance spill. It expands the person's liability by requiring him to agree to remediate pollution caused by any release at the establishment, rather than just to remediate the parcel itself. It appears that this would require the person to agree to remediate off-site pollution caused by a spill on the site.

Under current law, a Form IV is filed when there has been a hazardous waste spill and all of the necessary remediation tasks have been completed, other than (1) postremediation monitoring, (2) monitoring how natural processes reduce the contamination, or (3) the recording of a deed that restricts the future use of the land based on the degree to which it has been remediated. Under current law, the person signing a Form IV must agree to (1) conduct the monitoring in accordance with DEP's remediation standards, (2) conduct further investigations, if the monitoring indicates a need to take further steps, and (3) remediate the property in accordance with DEP's standards. The bill expands these provisions to apply to properties where there was a hazardous substances spill that has been remediated. It also requires the person to agree to conduct further investigation when needed, even if this is not based on the required monitoring.

Procedural Changes

The bill makes many changes in the way the forms described above are prepared and processed. By law, the transferor must (1) submit the form to the transferee before the transfer and (2) submit it to the commissioner no more than 10 days later. The bill specifies that the form submitted to the transferee must be complete. It requires the commissioner to notify the transferor as to whether he considers a

Form I or II complete within 90 days of its submission to him.

Under current law, the person submitting a Form III or IV must (1) simultaneously submit an environmental assessment to DEP and (2) certify that the information on the form is correct. The bill appears to extend this requirement to the certifying party filing a Form I for an uncontaminated property. It requires the certifying party filing any of these forms to provide DEP, upon the commissioner's written request, with technical plans, reports, and supporting documents relating to the investigation of the parcel or the remediation of the establishment, as specified in the commissioner request. The bill requires that a LEP supervise the preparation of the assessment. The bill also allows people who submitted a Form III to DEP before October 1, 1995, but who were barred from filing assessments because they were subject to enforcement actions, to file an assessment.

Under current law, if the property does not qualify for a Form I or II, the certifying party must prepare and sign a Form III or IV and submit it to the transferee and the commissioner. The bill instead allows any party to the transfer to prepare and sign the form. If no one else does this as a certifying party, the transferor must. The transferor also must submit the form to the transferee and DEP.

The bill increases, from 15 to 30 days, the amount of time the commissioner has between the submission of a Form III or IV and when he must notify the certifying party whether it is complete.

By law, when a person files a Form III or IV, the commissioner must determine whether (1) DEP must approve the remediation or (2) a LEP can verify that the investigation and remediation meet DEP standards. The bill requires DEP, in making its determination, to consider the potential risk to human health and the environment posed by a release of hazardous substances, as well as hazardous waste releases.

The bill allows the commissioner to order the transferor, transferee, or both to file a form if no else does or if the filed form is incomplete.

By law, if the commissioner notifies the certifying party that DEP approval is required, the party must (1) provide a schedule for submitting certain documents, (2) submit these documents on schedule, and (3) perform all the work identified in them. The bill adds scopes of work (overviews of the project) to these documents.

The bill requires that the investigations conducted in connection with the law be done in accordance with prevailing standards and guidelines. Current law requires them to be conducted in accordance with DEP regulations, once they are adopted or January 1, 2002, whichever is sooner.

The bill requires the certifying party, rather than the transferee, to pay the fees required by law.

The bill allows anyone who files a form to petition the commissioner to withdraw it. The person must make every reasonable effort to locate the transferor, transferee, and certifying party and must notify them by certified mail. They have 30 days to object to the petition. The commissioner can approve the petition if he finds that the property or business was not an establishment or the transaction not a transfer when the form was submitted. If the commissioner approves the petition, the certifying party has no further obligations, but DEP keeps the form and fee.

Penalties

Under current law, a person is subject to a fine of up to \$100,000 for (1) knowingly giving any false information on a document or (2) failing to comply with the requirements of these provisions. The bill eliminates the penalty for these offenses in connection with the law that provides for voluntary remediation of sites in areas with poor water quality. It subjects violations to DEP's general penalty provisions. Under these provisions, the penalty ranges from a fine of up to \$25,000 for a simple violation to a fine of up to \$50,000, imprisonment for up to three years, or both, for knowing violations.

NOTICE REQUIREMENTS

The bill exempts certain permit applications and DEP's tentative determinations on them from statutory notice requirements. The exemption applies to an application for a minor modification or revision of a wide range of DEP permits, if the commissioner has adopted regulations establishing criteria for what constitutes a minor modification or revision. These applications include permits issued under the following programs: air pollution, water pollution, solid waste, hazardous waste, wetlands, dams and other waterway

structures, stream channel encroachment, the regulation of petroleum and other hazardous materials, and the federal Water Pollution Control Act (section 401 permits).

The exemption also applies to: (1) an application for a minor modification of a pollution source permitted under the Clean Air Act in accordance with federal regulations, and (2) the commissioner's tentative determination on any of the above applications. The exemption supersedes other state environmental laws and regulations.

Under current law, permit applicants must publish a notice in a local newspaper, which must include detailed information about the application. Among other things, the notice must: (1) describe the activity for which the permit is being sought, its location, and any affected natural resources; (2) identify the type of permit being sought; and (3) describe how interested persons can get copies of the applications. The applicant must include a certification with the application that he will publish the notice and send DEP a certified copy of the notice. The applicant also must notify the chief elected official of the municipality where the regulated activity would take place. Under the bill, these notice requirements, as they continue to apply to major modifications and other non-exempt applications, would no longer supersede requirements in other statutes or regulations.

Under current law, the commissioner must cause a similar notice to be published when he makes a tentative determination on a permit application. The applicant must pay for this notice, which must contain information similar to that required in the application similar to that required in the application notice. In addition, the notice must include the tentative determination and describe how the public can participate in the case, including the amount of time they have to submit comments on the application. The commissioner must notify the local chief elected official of the determination

By law, the notice requirements do not apply to applications for a general permit, which are issued for minor activities that have minimal environmental effects. Nor do they apply to applications for water pollution discharges exempted by the commissioner, hazardous waste transporter permits, authorizations for solid waste facilities to handle special wastes, or the commissioner's determinations on them.

TEMPORARY AUTHORIZATIONS

The bill broadens the commissioner's power to issue temporary authorizations. It allows him to issue authorizations in connection with a broader range of water resources and dam activities rather than just in connection with diversions. By law, the commissioner can issue an authorization for activities for which he has authority to issue a general permit if: (1) the activity will last for no more than 30 days and will not pose a significant threat to human health and the environment, and (2) the authorization is needed to protect the public interest and does not conflict with relevant federal law.

PROPERTY TAX ON REMEDIATED SITES

By law, municipalities must pay the state treasurer part of the increased property tax received from contaminated sites that have undergone remediation. They must pay 20% of the amount by which the tax generated after remediation exceeds the greatest amount of tax received on the parcel in any of the preceding three years. The provision applies to parcels on which property tax is assessed and collected between January 1, 1999 and December 31, 2005. The money is deposited in the Special Contaminated Property Remediation and Insurance Fund. The fund is used, among other things, for contaminated site assessments and investigations.

Under current law, the requirement applies to the taxes on the parcel in the five assessment years after a licensed environmental professional files a final remedial action report or the commissioner approves a report, i.e., the parcel has been completely remediated. (By law, either DEP or the licensed environmental profession can conduct the remediation.) The bill additionally triggers the requirement when a Form IV is filed under the Transfer Act. The Transfer Act regulates transfers of businesses where hazardous waste was generated or processed. A Form IV is filed when: (1) a hazardous waste spill has occurred at a site, (2) the actions needed to remediate the site have been taken, other than monitoring or the recording of an environmental land use restriction (such restrictions are placed on land that has been substantially remediated, but not to the point where it can be used for all purposes), and (3) the party filing the form agrees to conduct further monitoring and, if necessary, further remediation.

Under current law, the property tax provision does not apply to

parcels cleaned up under the Urban Sites Remedial Action Program. It appears that this exemption does not apply when a Form IV is filed.

REPORT ON ENFORCEMENT ACTIVITIES

The bill eliminates a requirement that DEP report to the Environment Committee by February 1 annually on its enforcement activities. Under current law the report covers such things as the enforcement actions DEP in the previous calendar year and their timeliness, and the extent of compliance with environmental laws by DEP permittees.

BACKGROUND

Legislative History

On April 27, the House referred the original version of this bill (File 435) to the Judiciary Committee, which reported it unchanged on May 2.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 2

Judiciary Committee

Joint Favorable Report

Yea 37 Nay 0